Supreme Court, U.S.
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No. 93-985

IN THE
Supreme Court of the United States
OCTOBER TERM, 1993

JOSEPH BENNETT, JR.,
Petitioner,

v.

INDEPENDENCE BLUE CROSS and
MANCHESTER, INC.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF OF RESPONDENT INDEPENDENCE BLUE CROSS IN OPPOSITION

Of Counsel:
MORGAN, LEWIS & BOCKIUS

STEVEN R. WALL *
JEFFREY E. FLEMING
2000 One Logan Square
Philadelphia, PA 19103
(215) 963-4928/5095
Attorneys for Respondent Independence Blue Cross

* Counsel of Record

Dated: January 7, 1994

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

1. Whether the Third Circuit Court of Appeals correctly dismissed Petitioner's appeal in Bennett I as untimely, where it was filed more than 30 days after judgment was entered in the District Court?

2. Whether the Third Circuit Court of Appeals correctly affirmed the District Court's Order denying Petitioner's motion to reopen the time for appeal in Bennett II, where the motion to reopen was untimely under Fed. R. App. P. 4(a)(6)?

PARTIES BELOW

Petitioner Joseph Bennett, Jr. was the Plaintiff in the District Court and the Appellant in the Third Circuit Court of Appeals. Respondents Independence Blue Cross and Manchester, Inc. were the Defendants in the District Court and the Appellees in the Third Circuit Court of Appeals.

Respondent Independence Blue Cross has no parent company. Independence Blue Cross has no subsidiaries or affiliates that have issued shares to the public.

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BRIEF OF RESPONDENT INDEPENDENCE BLUE CROSS IN OPPOSITION

Respondent Independence Blue Cross ("IBC") respectfully requests that the Court deny the Petition for Writ of Certiorari seeking review of the two judgments of the United States Court of Appeals for the Third Circuit entered on September 20, 1993.

JURISDICTION AND OPINIONS AND JUDGMENTS BELOW

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The judgment of the Court of Appeals for the Third Circuit in *Joseph Bennett, Jr. v. Independence Blue Cross and Manchester, Inc.*, No. 93-1550

("Bennett I"), was entered on August 31, 1993. The judgment of the Court of Appeals for the Third Circuit in *Joseph Bennett, Jr. v. Independence Blue Cross and Manchester, Inc.*, No. 93-1680 ("Bennett II"), was entered on August 24, 1993. The Orders of the Court of Appeals denying rehearing were entered on September 20, 1993.

COUNTERSTATEMENT OF THE CASE

Petitioner Joseph Bennett, Jr. commenced this action by filing a Complaint against Independence Blue Cross ("IBC") and Manchester, Inc. ("Manchester") on July 22, 1992. Mr. Bennett, a former employee of IBC, purported to state claims for relief against IBC and Manchester for civil conspiracy under Pennsylvania law, interference with attainment of employee benefits in violation of Section 510 of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1140, age discrimination in violation of the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. §§ 621-34, and sex and race discrimination in violation of Title VII of the Civil Rights Act, 42 U.S.C. § 2000e *et seq.*

On October 8, 1992, IBC moved to dismiss Mr. Bennett's Complaint in its entirety under Rules 12(b)(6) and 56(b) of the Federal Rules of Civil Procedure. IBC argued that Mr. Bennett's claims were barred by the knowing and voluntary General Release that he signed at the time of the termination of his employment in exchange for a severance package from IBC. Additionally, IBC argued that Mr. Bennett failed as a matter of law to state claims for civil conspiracy and interference with attainment of benefits. The District Court granted IBC's Motion on January 13, 1993. The District Court's Order and Judgment granting IBC's Motion was entered on the docket on January 15, 1993.

Due to an administrative error in the Clerk's office of the District Court, Mr. Bennett apparently was not

mailed a copy of the District Court's Order and Memorandum of Decision, although a copy was sent to Mr. Bennett's former counsel. Immediately upon learning that Mr. Bennett was not sent a copy of the District Court's Order and Memorandum of Decision, counsel for IBC sent a copy to Mr. Bennett by certified mail on May 17, 1993. Mr. Bennett received the Order and Memorandum of Decision on May 19, 1993.

On June 3, 1993, without seeking a reopening of the time for appeal, Mr. Bennett filed an untimely Notice of Appeal from the District Court's Order and Judgment granting IBC's Motion to Dismiss. The Court of Appeals docketed Mr. Bennett's appeal as No. 93-1550 ("Bennett I").

By letter of June 18, 1993 to the District Court, Mr. Bennett requested an extension of time in which to appeal. The District Court construed Mr. Bennett's June 18, 1993 letter as a motion to reopen the time for appeal under Rule 4(a)(6) of the Federal Rules of Appellate Procedure. By Order and Memorandum of June 29, 1993, the District Court denied as untimely Mr. Bennett's request for an extension of time in which to appeal.

By letter of July 4, 1993 (incorrectly dated June 4, 1993), Mr. Bennett forwarded a copy of the District Court's June 29, 1993 Order and Memorandum to the Court of Appeals for the Third Circuit. The Third Circuit construed Mr. Bennett's July 4, 1993 letter as a notice of appeal from the District Court's June 29, 1993 Order and Memorandum denying his motion to reopen the time in which to appeal. The Court of Appeals docketed Mr. Bennett's second appeal as No. 93-1680 ("Bennett II").

On August 24, 1993, the Court of Appeals issued an Order in Bennett II summarily affirming the District Court's Order and Memorandum denying Mr. Bennett's motion to reopen the time in which to appeal. On Au-

gust 31, 1993, the Court of Appeals issued an Order in Bennett I dismissing Mr. Bennett's appeal as untimely. Mr. Bennett thereafter sought rehearing on both Orders. On September 20, 1993, the Court of Appeals issued Orders in Bennett I and Bennett II denying Mr. Bennett's petitions for rehearing.

SUMMARY OF REASONS FOR DENYING THE WRIT

The Petition for Writ of Certiorari should be denied because the Court of Appeals correctly dismissed as untimely Mr. Bennett's appeal in Bennett I, and correctly affirmed the District Court's exercise of discretion in not reopening the time to appeal in Bennett II. The decisions of the Third Circuit Court of Appeals present no conflict among the courts of appeals and raise no important question of federal law not settled by this Court. Rather, the Petition seeks only to have the Court review clear, well-settled rules regarding the timeliness of an appeal and a motion to reopen time for appeal. Petitioner's request does not warrant the exercise of the Court's discretionary certiorari review.

REASONS FOR DENYING THE WRIT

I. THE COURT OF APPEALS CORRECTLY DECIDED THAT MR. BENNETT'S NOTICE OF APPEAL IN BENNETT I WAS UNTIMELY BECAUSE IT WAS FILED MORE THAN 30 DAYS AFTER JUDGMENT WAS ENTERED IN THE DISTRICT COURT.

The decision of the Court of Appeals in Bennett I involves a straightforward application of Rule 4(a)(1) of the Federal Rules of Appellate Procedure. Under Rule 4(a)(1), Mr. Bennett had 30 days from January 15, 1993, the date of entry of the judgment in the District Court, to file his notice of appeal. He did not do so, but rather filed a notice of appeal on June 3, 1993. Accordingly, the Court of Appeals in Bennett I correctly dismissed his appeal as untimely.

II. THE COURT OF APPEALS CORRECTLY DECIDED THAT THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN DENYING MR. BENNETT'S MOTION TO REOPEN THE TIME FOR APPEAL IN BENNETT II BECAUSE THE MOTION TO REOPEN WAS ITSELF UNTIMELY FILED.

Because Mr. Bennett apparently did not receive a copy of the District Court's Order and Memorandum of Decision within 21 days of its issuance, Mr. Bennett had seven days from May 19, 1993, the date on which he received a copy of that Order, to file a motion to reopen the time to appeal. Rule 4(a)(6) of the Federal Rules of Appellate Procedure states as follows:

> The district court, if it finds (a) that a party entitled to notice of the entry of a judgment or order did not receive such notice from the clerk or any party within 21 days of its entry and (b) that no party would be prejudiced, may, upon *motion filed* within 180 days of entry of the judgment or order or *within 7 days of receipt of such notice*, whichever is earlier, reopen the time for appeal for a period of 14 days from the date of entry of the order reopening the time for appeal.

Fed. R. App. P. 4(a)(6) (emphasis added).

Mr. Bennett failed to file a motion to reopen the time for appeal within the required seven-day period. Instead, on June 18, 1993, he filed a letter with the District Court, which was interpreted as a motion to reopen. The District Court denied the Motion as untimely on June 29, 1993. On appeal in Bennett II, the Third Circuit Court of Appeals correctly determined that the District Court did not abuse its discretion, and summarily affirmed the June 29, 1993 Order.

CONCLUSION

For the foregoing reasons, Respondent Independence Blue Cross respectfully submits that the Petition should be denied.

Respectfully submitted,

Of Counsel:
MORGAN, LEWIS & BOCKIUS

STEVEN R. WALL *
JEFFREY E. FLEMING
2000 One Logan Square
Philadelphia, PA 19103
(215) 963-4928/5095
Attorneys for Respondent Independence Blue Cross

* Counsel of Record

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PETITIONER

V.

INDEPENDENCE BLUE CROSS AND

MANCHESTER INC.

RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI
TO THE JUDGMENT SUPREME COURT OF THE U.S.

BRIEF OPPOSING REPONDENT'S MOTION TO DENY PETITION

PRO SE

JOSEPH BENNETT JR.
312 HENDERSON AVE.
MILLVILLE, N.J. 08332
PHONE 609-825-5388

11 pp

QUESTIONS PRESENTED

WHILE YOU READ THESE QUESTIONS, PLEASE KEEP IN MIND THAT I AM NOT PRO SE BY CHOICE. I AM PRO SE BECAUSE OF THE REPUTATION, ATTITUDE, AND ACTIONS OF JUDGE JOSEPH MCGLYNN OF THE DISTRICT COURT OF PA.

Question 1.

WAS FEDERAL RULE App. 4(a)(6) ENACTED TO PREVENT UNNECESSARY DELAYS IN COURT PROCEEDINGS? IF NOT, WHAT IS THE PURPOSE OF THE RULE?

Question 2.

DOES THIS COURT FEEL, AFTER LOOKING AT THE DOCUMENTS AND ARGUMENTS PRESENTED, THAT I SUBMITTED MY APPEAL TO THE DISTRICT COURT ON JUNE 3, 1993 RATHER THAN MAY 26, 1993 BECAUSE I WAS TRYING TO DELAY THESE PROCEEDINGS?

Question 3.

DOES THIS COURT BELIEVE THAT THE COURT SENT BOTH DECISIONS TO MY FORMER ATTORNEY IN ERROR WHEN:

a. THE FIRM DID NOT RECEIVE EITHER OF THE TWO DECISIONS OR DID THEY RECEIVE ANY OTHER CORRESPONDENCE FROM THE COURT FROM THE TIME JUDGE MCGLYNN GRANTED THE ATTORNEYS MOTION TO WITHDRAW?

b. SINCE THIS ACTION WAS FILED IN DISTRICT COURT, THE ONLY TWO DOCUMENTS I DID NOT RECEIVE TIMELY FROM EITHER THE COURTS OR THE ATTORNEYS FOR THE DEFENDANTS ARE THE TWO DECISIONS. DO YOU BELIEVE THAT IT IS A COINCIDENCE THAT THE ONLY TWO DOCUMENTS THAT WOULD ACTIVATE RULE App. 4(a)(6) ARE THE ONLY TWO DOCUMENTS I DID NOT RECEIVE?

Question 4.

WAS THE RULE USED BY THE JUDGES TO DENY MY APPEAL USED FOR THE PURPOSE IT WAS INTENDED OR IS THERE A QUESTION OF WHETHER IT WAS USED BY THE JUDGES AND THE DEFENDANTS TO BLOCK THIS VALID COMPLAINT?

Question 5.

DOES THIS COURT FEEL THAT A PRO SE PLAINTIFF SHOULD BE EXPECTED TO KNOW THAT THE TIME TO APPEAL A DECISION WOULD BE REDUCED FROM 30 DAYS TO SEVEN DAYS BECAUSE THE JUDGE DOES NOT NOTIFY THE PLAINTIFF OF HIS DECISIONS?

Question 6.

DO YOU FEEL THAT NOT SENDING THE DECISIONS TO A PLAINTIFF IS AN ACCEPTABLE MANEUVER BY A JUDGE TO TAKE ADVANTAGE OF A PRO SE PLAINTIFF AND TO DISMISS A CASE WHERE THE PLAINTIFF HAS SUBMITTED PROOF OF FRAUD AND DISCRIMINATION.

LIST OF PARTIES AND COURT DOCKET NUMBERS.

THE PARTIES TO THE PROCEEDINGS BELOW WERE:

JOSEPH BENNETT, PETITIONER.

V. INDEPENDENCE BLUE CROSS AND MANCHESTER,

RESPONDENTS.

COURT DOCKET NUMBERS ARE AS FOLLOWS:

COMPLAINT WITH THE EEOC, PHILADELPHIA PA. OFFICE. CHARGE # 170911048

COMPLAINT WITH THE FEDERAL COURT OF THE EASTERN DISTRICT OF PA. DOCKET No. 92-4249.

APPEAL WITH THE FEDERAL COURT OF THE EASTERN DISTRICT OF PA. DOCKET No. 92-1550.

APPEAL TO THE APPEALS COURT OF THE THIRD CIRCUIT, DOCKET No. 93-1680.

REQUEST FOR RE-HEARING FOR APPEALS TO THE APPEALS COURT OF THE THIRD CIRCUIT, No. 93-1550 AND 93-1680.

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